

603 KAR 5:155. Removal and pruning of vegetation.

RELATES TO: KRS 176.050(1), 177.106, 177.830(5), 177.990(2)

STATUTORY AUTHORITY: KRS 176.050(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the department to promulgate administrative regulations concerning the care and maintenance of roads in the Commonwealth. This administrative regulation establishes a permitting process by which a noncommercial or a commercial entity may apply to the department for the removal of vegetation near state roads and highways.

Section 1. Definitions. (1) "Advertising device" is defined by KRS 177.830(5).

(2) "Certified arborist" means an arborist prequalified within the landscaping classification of the Transportation Cabinet's Prequalification Committee and certified by the International Society of Arboriculture.

(3) "Commercial entity" means a business or company, including the owner of an outdoor advertising device, whose activities generate or are intended to generate revenue.

(4) "Illegal outdoor advertising device" means an outdoor advertising device that was erected or is maintained in violation of federal, state, or local law or ordinance.

(5) "Noncommercial entity" means a private landowner including a farm or single family residence.

(6) "REDA" means a roadside environmental district administrator located in each of the district offices of the Transportation Cabinet.

(7) "Specimen tree" means a native Kentucky tree outstanding for its size and quality that has been designated on the department's Web site.

Section 2. Vegetation Removal Permit Eligibility. (1) A permit to remove or prune vegetation in order to remove vegetative obstructions to the visibility of a noncommercial or commercial entity, including an outdoor advertising device, located in a public right-of-way under the jurisdiction of the Kentucky Transportation Cabinet, shall be obtained from the department, in accordance with this administrative regulation, prior to entry or disturbance of the right-of-way.

(2) A permit to remove or prune vegetation by a noncommercial entity or a commercial entity shall be approved by the department:

(a) In order to improve the safety of the traveling public;

(b) If necessary to eliminate hazards to personal property;

(c) To enhance visibility for the travelling public;

(d) To eliminate an unsightly condition and improve roadway aesthetics if recommended by the department's arborist or REDA as established in Sections 4 and 5 of this administrative regulation; or

(e) To remove the undesirable vegetation listed on the department's Web site at www.transportation.ky.gov/permits/.

(3) A permit to prune or remove vegetation shall not be issued:

(a) For an illegal outdoor advertising device or if the legal status of an outdoor advertising device is in dispute;

(b) If an applicant is required to enter through state right-of-way in order to access property for vegetation pruning or removal unless authorized by the department as part of the permit to remove vegetation; or

(c) To remove specimen trees as listed on the department's Web site at www.transportation.ky.gov/permits/ unless recommended by the department's arborist or REDA.

(4) A noncommercial entity or a commercial entity shall apply to the department for a permit to remove or prune vegetation by using Application for Encroachment Permit, TC 99-1(A). The form shall be submitted to the Transportation Cabinet district office that is responsible for the area of the proposed vegetation management plan.

Section 3. General Requirements for Vegetation Removal. (1) An applicant shall:

- (a) Submit a mitigation plan to replant an area if a specimen tree is removed pursuant to Section 2(3)(c) of this administrative regulation unless the department's arborist or REDA indicates that replanting is not feasible;
 - (b) Plant a designated area with noninvasive plant species that favor the bee and butterfly population if recommended by the department's arborist or REDA;
 - (c) Remove tree stumps and roots on a slope of 3:1 or less flush with the ground surface;
 - (d) Remove tree stumps and roots on a slope greater than 3:1 to a height of three (3) inches or less above the surrounding ground surface. The height shall be measured from the top of the stump or root to its base on the lowest side of the slope;
 - (e) Remove and dispose of cut material and debris from the state right-of-way as specified in the permit issued by the department;
 - (f) Fill, grade, and compact a hole or void created by the performed work with top soil;
 - (g) Use a seeding and erosion control plan;
 - (h) Not remove or prune a redbud tree, dogwood tree, or designated state tree without approval of the department based on the health and condition of the trees at the permitting;
 - (i) Not remove more than twenty-five (25) percent of the crown of each tree approved for pruning by the department's arborist or REDA;
 - (j) Remove or prune vegetation with the supervision of a certified arborist or district REDA; and
 - (k) Perform work within 180 consecutive calendar days of the work start date.
- (2) A permit to remove vegetation shall be granted by the department in areas designated as a beautification project if the areas have become so unsightly and overgrown that they no longer meet the criteria for a beautification project.
- (3) Work shall not be performed until a completed permit application is received and approved by the department pursuant to Sections 4 or 5 of this administrative regulation.

Section 4. Noncommercial Assistance of a REDA. (1) A detailed explanation of the proposed vegetation management plan shall be included by the noncommercial entity with the submission of a TC Form 99-1(A) to the department.

(2) A non-commercial entity may use either a certified arborist or a department REDA to submit a vegetation management plan to the department. A certified arborist used by a non-commercial entity shall comply with Section 5 of this administrative regulation.

(3) The REDA shall review the submitted application to remove or prune vegetation and coordinate the process of removal with the permittee.

Section 5. Commercial Use of Arborist. (1) A commercial entity shall be required to use a certified arborist for vegetation management.

(2) A commercial applicant with three (3) active permits for vegetation removal shall not be eligible for another permit until the work on at least one (1) active permit is completed.

(3) The completed application for a permit to remove or prune vegetation shall include:

- (a) A general description of work to be performed;
- (b) The address and telephone number of the party applying for a permit;
- (c) A photograph, location map, and a detailed and scaled drawing showing the location of

the vegetation proposed to be trimmed or removed;

(d) A vegetation management plan submitted by a certified arborist that shall include:

1. A general description of vegetation proposed to be removed and the work to be performed;

2. An inventory of trees larger than four (4) inches in diameter as measured twelve (12) inches from ground level within the area proposed for vegetation removal or pruning; and

3. Documentation that the applicant consulted with the United States Fish and Wildlife Service regarding a potential for the proposed work to affect federally listed, threatened, or endangered species;

(e) Proof that the applicant has obtained local, state, or federal approval as required;

(f) The name and address of the contractor that will be performing the work;

(g) A signed release from property owners whose property lines front the right-of-way where vegetation management is proposed;

(h) A signed consent from a private property owner that gives the permittee access from the private property to the work site;

(i) A seeding and erosion control plan pursuant to the department's manual, Standard Specifications for Road and Bridge Construction;

(j) The proposed work schedule including the beginning and ending date of work;

(k) A payment bond and a performance bond until the project is released by the department; and

(l) Proof of liability insurance equal to or in excess of \$3 million. The department shall be listed as the "Certificate Holder."

(4) A permit shall not be granted if the vegetation removal will adversely affect federally listed, threatened, or endangered species unless the United States Department of Fish and Wildlife Service approves the permittee's proposal to minimize the impact.

(5) The certified arborist shall notify the department that the work is complete and certify that the work has been performed according to the permit.

(6) Two (2) years after the date the work is completed, a permittee shall submit to the department a report completed by a certified arborist that includes current color photographs of the area where the work was performed.

(7) If there are expenses related to the use of a certified arborist, or a review by the department, the applicant shall submit a completed Agreement for Services to be Performed, TC 99-22, to the department and reimburse the department for administrative expenses incurred as a result of the vegetation management plan.

Section 6. Notice of Violation; Appeals. (1) The department shall notify the permittee by certified letter if a violation of this administrative regulation has occurred.

(2) If the permittee fails to respond to the certified notice or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action against the permittee.

(3)(a) A vegetative permit holder aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the notice.

(b) A request for a hearing shall thoroughly describe the grounds on which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

Section 7. Penalties. (1) A vegetative permit holder who violates this administrative regulation shall be fined a civil penalty of \$500 as established in KRS 177.990(2). A corrective plan

by a certified arborist or REDA shall be submitted within thirty (30) days of the notice of violation.

(2) The department shall deny a permit that contains intentionally false or misleading information.

(3) If a tree dies related to executing the vegetative plan, within two (2) years of being pruned or planted, the permittee shall remove the dead tree and:

- (a) Repay the department for the loss of the state-owned tree; or
- (b) Replant the area.

(4) If damage occurs, related to executing the vegetative plan, to vegetation not included in the vegetation permit, the permit holder shall be fined in accordance with subsection (1) of this section and shall be required to replant the area.

(5) The permittee shall be solely responsible for damage or destruction to private property that occurs in the course of executing the vegetation management plan.

(6) The permittee shall indemnify the department and the cabinet pursuant to the Application for Encroachment Permit, TC Form 99-1(A) in the event that claims are brought against the department or cabinet by third parties for damages sustained in the course of executing a vegetation management plan.

Section 8. Implementation. If a provision of this administrative regulation is found to be invalid by a court of competent jurisdiction, this administrative regulation shall be invalid in its entirety.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Agreement for Services to be Performed," TC 99-22, January 2015;
- (b) "Application for Encroachment Permit", TC 99-1(A), January 2015; and
- (c) "Standard Specifications for Road and Bridge Construction", June 15, 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>. (41 Ky.R. 2453; Am. 42 Ky.R. 348; 1153; eff. 11-5-2015.)